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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		09/870,865	May 31, 2001
		First Named Inventor	
		Stephen A. Lindia, et al.	
		Art Unit	Examiner
		3623	J. R. Loftis
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 33,328 Registration number</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34</p>		<p><u>[Signature]</u> John F. Letchford Typed or printed name</p> <p>856.354.3013 Telephone number</p> <p><u>2-6-2006</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>3</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :
Stephen A. Lindia, et al. :
: :
Application No.: 09/870,865 :
: Group Art Unit: 3623
Filed: May 31, 2001 :
: Examiner: J.R. Loftis
For: EMPLOYEE PERFORMANCE :
MONITORING SYSTEM :
: :
Attorney Docket No.: :
GOL101.10009 :
_____ :

I, John F. Letchford, Registration No. 33,328, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 6, 2006.



JOHN F. LETCHFORD

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REMARKS IN SUPPORT OF PRE-APPEAL REQUEST FOR REVIEW

In response to the Advisory Action dated February 1, 2006, Applicants respectfully present these Remarks, Extension of Time Request, and Notice of Appeal (and accompanying fees therefor).

Claims 10-18 remain in the present application. Claims 10-14 and 16-18 stand finally rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Dirksen, et al. (U.S. Patent No. 6,853,975, "Dirksen"). Claim 15 stands finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Dirksen. Claim 10 is the sole remaining independent claim.

At several locations throughout the Final Office Action (Mail Date: October 17, 2005) the Examiner asserted: "In light of the specification, and for purposes of examination, the claims are construed to mean that a user is not obligated to review the performance of another person just because the person is listed for potential review." (emphasis added). At the first of those instances (the final sentence of the paragraph bridging pages 2 and 3 of the Final Office Action), the Examiner followed that statement with: "Prior rejections under Dirksen are upheld, but modified to reflect the new understanding of the claims." These statements serve as the foundation for the Examiner's final rejections of the claims.

A unique aspect of the present invention is that it permits persons (reviewers) who desire to review the job performance of other persons (reviewees) to do so without obligation to do so. That is, persons who have not been chosen by a reviewee to review the reviewee may nonetheless do so if they so desire. This capability is expressly set forth in independent claim 10 wherein it is stated: "selecting, by a user of the system, a person whose employment performance the user desires to review but is not obligated to review." A substantial advantage afforded by this feature is that it permits individuals who may have substantial knowledge of a person's employment performance,

e.g., colleagues from within and outside of a person's employment department, from providing input that may be useful in evaluating that person even if the reviewee had not selected those persons to review his or her performance. Dirksen is utterly silent as to this unique functionality.

What the Examiner fails to appreciate is that Dirksen enables reviewees to select their reviewers but does not permit reviewers to select their reviewees. In this respect Dirksen is no different than the commercially available 360° Feedback® and the Visual 360® so-called "360°" employee review systems discussed at length in the "Background of the Invention" section of Applicants' specification.

The Examiner has unyieldingly relied upon column 4, lines 55-61 of Dirksen as basis for her belief that Dirksen discloses the unique limitation of Applicants' independent claim 10 which now reads: "selecting, by a user of the system, a person whose employment performance the user desires to review but is not obligated to review." That passage from Dirksen is reproduced below (with emphasis added).

Once the rater nominations have been submitted and approved by a manager, the approved raters may initiate the rating process. However, the approved raters must first complete the previously described training process prior to initiating the rating process. Once the training process is completed, the rater may enter the rating system, and referring to FIG. 16, the rater may select from screen 124 the name 126, 128 of the person he or she wishes to rate.

The Examiner's rendering of this passage is skewed because it is taken out of the remaining context of the Dirksen patent. With due respect, the Examiner does not appear to appreciate the significance of the underscored portion of the foregoing passage. It is the ratees (reviewees) who first nominate or select raters (reviewers) to review the ratees' performance. See Dirksen at column 1, lines 50-53; column 2, lines 8-11 and the Abstract. The nominees are then approved or disapproved by a ratee's manager. See Dirksen at column 1, lines 53-54; column 3, lines 8-24. These are conventional steps already performed by conventional "360°" employee review systems.

Following management approval of selected raters, the nominated raters are obligated to rate all of the ratees for whom they have been approved to rate.

Turning to FIG. 21, screen 166 signifies the end of the ratings process, and box 168 is provided for submitting optional comments regarding the employee being rated. In screen 170 of FIG. 22, all ratings may be submitted by selecting box 172, thus completing the duties of the rater.

Dirksen at column 5, lines 12-16 (double emphasis added).

It is quite clear from the foregoing that the nominated rater is duty-bound or obligated to review only the ratees who have nominated him or her to do so. A rater cannot independently select other persons to review.

Nowhere does Dirksen expressly or impliedly disclose or suggest that potential raters have the choice to review persons who have not nominated them for review. Indeed, what Dirksen

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does teach is conventional and the antithesis of that specifically called for in Applicants' independent claim 10.

Dirksen simply does not and cannot perform the novel method for conducting an employee performance review program defined in amended independent claim 10. Thus, it is respectfully requested that the outstanding Section 102 (a) and (e) rejection of that claim and the Section 102 and Section 103 rejections of its dependent claims 11-18 be withdrawn.

In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

Respectfully submitted,

Date: February 6, 2006



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